

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

CHRISTINA DYCUS,

Appellant.

Master Case No. M2012-716

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

APPEARANCES:

Appellant, Christina Dycus, pro se

Department of Health, Prevention and Community Health Division,
Nutrition Services Office, Women Infants and Children Program
(WIC Program), by
Office of the Attorney General, per
Janis Snoey, Assistant Attorney General

PRESIDING OFFICER: John F. Kuntz, Review Judge

On July 18, 2012, the Presiding Officer (on authority delegated by the Secretary of Health) conducted a fair hearing in this matter. The Appellant requested a fair hearing to contest the WIC Program's Warning and Claim Letter dated June 6, 2012.

ISSUES

- A. Did the Appellant violate her agreement with the WIC Program by using checks which she had reported as lost or stolen and the checks which were issued to replace the stolen checks?
- B. If so, must the WIC Program establish a claim against the Appellant for the full value of benefits pursuant to 7 CFR 246.23(c)(1)(i)?

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SUMMARY OF THE PROCEEDINGS

The Appellant testified on her own behalf. Jennifer Livingston, WIC Program/Integrity Non-compliance Specialist, testified on behalf of the WIC Program.

The Presiding Officer admitted the following exhibits:

- Exhibit P-1: Appellant's Fair Hearing Request, dated June 6, 2012.
- Exhibit P-2: Warning and Claim Letter mailed from Del McNeal, WIC Integrity Unit Manager, to the Appellant (with invoice for \$40.95), dated June 6, 2012.
- Exhibit P-3: Lost, Stolen, or Destroyed Check Form, signed by the Appellant on February 27, 2012.
- Exhibit P-4: WIC Rights and Responsibility Form, signed by the Appellant on October 4, 2011.
- Exhibit P-5: WIC check nos. 1021237776; 1021237777; and 1021237778, actual purchase prices \$20.78; \$14.17; and \$6.00 respectively. The transaction date for all three checks was March 25, 2012.
- Exhibit P-6: WIC check nos. 1021209300; 1021209301; and 1021209302, actual purchase prices \$18.62; \$14.23; and \$6.00 respectively. The transaction date for all three checks was April 7, 2012.
- Exhibit P-7: Check history spreadsheet, showing dates check nos. 1021237776 through 1021237778 and 1021209300 through 1021209302 were used or not used.

I. FINDINGS OF FACT

1.1 WIC is a federally funded, special supplemental nutrition program for women, infants, and children.¹ The WIC recipient (the client) under the WIC Program is

¹ See WAC 246-790-010(6).

the Appellant's son (Kian); the Appellant is one of the individuals (the caregiver) authorized to sign the WIC checks on behalf of Kian.

1.2 Prior to participating in the WIC Program, the caregiver is required to participate in a class to learn the rights and responsibilities that are required under the program. The Appellant participated in the required class in October 2011. See Exhibit P-4. One of the rules that WIC caregivers are required to accept and understand reads:

Report any lost, stolen, or destroyed checks to WIC staff. *Do not use any checks you have reported as lost, stolen, or destroyed.* If you find these checks return them to the clinic.

Exhibit P-4, page 2 (emphasis added).

1.3 On or about February 27, 2012, the Appellant reported the loss of some of her WIC checks and she completed a Lost, Stolen or Destroyed Check Form and turned it into the Parkland WIC Clinic.² See Exhibit P-3. Following the submission of the report, the WIC Clinic provided the Appellant with additional WIC checks (nos. 1021237776 through 1021237778, issued February 27, 2012) to replace the original checks that were lost (nos. 1021209300 through 1021209302, issued January 9, 2012). See Exhibits P-5 (replacement checks); P-6 (original checks); and Exhibit 7, page 2 (Client Information – Detail Report).³

1.4 When a caregiver submits a WIC check to a retailer, the caregiver is required to submit proof of his or her identity (show that he or she is, in fact, the WIC

² The Appellant reported six WIC checks were lost. Only three of the numbered checks are at issue in this Fair Hearing. The other three WIC checks were not used at any authorized retailer.

³ WIC Program witness Ms. Livingston stated at the hearing that lost checks are no longer replaced. It was not clear whether the Program's policy applied to all WIC recipients or only the Appellant.

caregiver). The retailer or employee fills in the date of the transaction and the amount of the purchase. The caregiver then signs the WIC check in the presence of the retailer or retailer's employee. The WIC check specifies what products (cereal, milk, eggs, cheese, juice and other approved food products) can be purchased with the check.

1.5 A WIC caregiver receives the WIC checks in a folder, which is approximately the size of a 3 inch by 8.5 inch business envelope. The caregiver's signature is on the front of this folder. Some WIC retailers accept this signature as confirmation of the identity of the individual presenting the WIC checks for the purchases. In other words, while some WIC retailers require photo identification of an individual, others merely compare the signature on the front of the WIC check folder with the signature of the person signing the WIC check in the retailer's presence.

1.6 Jennifer Livingston is a WIC Integrity Unit employee. Her duties include tracking WIC check transactions to ensure there is no fraud or overpayment of WIC benefits. Once WIC checks are used at an approved WIC retailer, the WIC checks are deposited in a federal reserve bank. The information is then submitted to a tracking website. The WIC Program uses the tracking website information to ensure that there is no fraud or benefit overpayment.

1.7 A review of the WIC Program's software program shows that both the replacement WIC checks (checks 1021237776 through 1021237778) and the original WIC checks (checks 1021209300 through 1021209302) were used to purchase approved WIC groceries. See Exhibit P-7. Upon receiving this information, Ms. Livingston obtained copies of both the replacement and original WIC checks to

compare the signatures on the checks. See Exhibits P-5 and P-6. Ms. Livingston examined all of the original and replacement check signatures and determined that they were, in fact, signed by the Appellant. This signature was consistent with the Appellant's signature on her Rights and Responsibilities form (Exhibit P-4) and the Lost, Stolen or Destroyed Check form (Exhibit P-3).

1.8 The Appellant denies that she used the original WIC checks and claims that someone took both the original WIC checks and the WIC check folder. The Appellant believes that anyone with the WIC folder could forge her signature. The Appellant believes that with the forged signature on the WIC folder it would be easy to forge her signature on the WIC checks and use the checks.

1.9 The Appellant remembers helping her sister move in Sumner, Washington on March 25, 2012 (the date and the location the replacement WIC checks were used). See Exhibit 5. The replacement WIC checks were used at Winco #74 (located in Sumner, Washington).⁴

1.10 The original checks were used at the Winco #106 (located in Tacoma, Washington) on April 7, 2012. The Appellant acknowledges that she does live in Tacoma, but does not use the Winco #106 store for her regular WIC purchases. The Appellant denies the signature on the original WIC checks is her signature, but admits it does resemble her signature.

⁴ Each authorized retailer has a unique number, which aids in identification of the store and location.

1.11 Based on the totality of the evidence, the Presiding Officer finds:

A. A comparison of the signatures on all of the documentary evidence reveals the signature is the same on the original and replacement WIC checks.

B. For the Appellant's explanation to be valid, a person would not only need to have the WIC folder with the Appellant's signature, but be able to sign the WIC check in front of a retailer with a signature that closely resembles the Appellant's signature. It is highly improbable for an individual to be able to copy a signature that compares so closely to the Appellant's signature.

C. While the Lost, Stolen or Destroyed Check form indicates the Appellant lost her checks, it does not report that the Appellant lost her WIC folder as well. Knowing that the WIC folder can be used as identification, it would be important to report its loss as well as the checks. The Appellant's failure to report the loss of the WIC folder makes the Appellant's explanation less credible.

D. The original WIC checks were issued in January 2012, but were not used until April 2012.

E. The original WIC checks were used in Sumner, Washington on April 7, 2012, at a time the Appellant remembers being in Sumner with her sister. The replacement WIC checks were used in Tacoma, Washington (the city the Appellant lives in), in March 2012 (approximately four weeks after the Appellant received the replacement WIC checks on February 27, 2012). The totality of the evidence does not show any fraud or intent to use more benefits than the

Appellant was entitled to under the WIC program; it is a mere mistake on the Appellant's part.

II. CONCLUSIONS OF LAW

2.1 The Department of Health, and by delegated authority the Presiding Officer, has jurisdiction over the Appellant's request for a fair hearing in this matter.

2.2 The Department of Health has established, by a preponderance of the evidence, that the Appellant violated 7 CFR 246.23(c)(1)(i), which provides in part:

If the State agency determines that program benefits have been obtained or disposed of improperly as a result of a participant violation, *the State agency must establish a claim against the participant for the full value of such benefits.*

7 CFR 246.23(c)(1)(i) (emphasis added).

2.3 The Appellant claims that she did not use both the original and replacement WIC checks. The totality of the evidence proves otherwise. Once the Appellant obtained more WIC benefits than she was eligible for, the WIC Program must establish a claim for the full value of such benefits under 7 CFR 246.23(c)(1)(i).

2.4 The appropriate sanction is reimbursement. The Appellant owes the WIC Program \$40.95.

III. ORDER

Based on the Findings of Fact and Conclusions of Law above, the Presiding Officer hereby ORDERS:

3.1 The Appellant to reimburse the sum of \$40.95 to the WIC Program of the Department of Health. The Appellant must fully reimburse the WIC Program within 90 days of the date of service of this Order.

3.2 A protective order was issued in this matter. See Prehearing Order No. 1.

Dated this ____ day of August 2012.

JOHN F. KUNTZ, Review Judge
Presiding Officer

NOTICE TO PARTIES

Either party may file a petition for reconsideration. RCW 34.05.461(3) and RCW 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

WIC Program
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-10-704. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A petition for judicial review must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>

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